

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

v.

JACOB WARNER

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CR. NO. 2:06-cr-275-WKW

ORDER

This case is before the court on Defendant Jacob Warner's Unopposed Motion to Continue Trial (Doc. # 34). The criminal case is currently set for trial during the August 6, 2007, trial term. For the reasons that follow, the court finds that the trial of the defendant should be continued pursuant to 18 U.S.C. § 3161(h).

While the grant of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the Court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.

18 U.S.C. § 3161(c)(1). However, the Act excludes from the 70 day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(8)(A).

The court finds that the ends of justice served by continuing this trial outweigh the best interest of the public and the defendant in a speedy trial. In support of the defendant's motion to

continue, counsel for defendant represents that he was appointed by the Court to represent Mr. Warner on April 4, 2007 (Doc. # 28). Despite numerous attempts to contact the defendant, counsel has never met or spoken with the defendant. Letters sent to his residence have been returned and marked by the USPS as “Undeliverable. No forwarding address on file.” On or about April 10, 2007, U.S. Probation Officer Bernard Ross contacted counsel to inform him that he has no contact with the defendant, and that defendant was in violation of his condition of release. Due to these circumstances, there has been insufficient time to adequately prepare the defendant for trial. Moreover, the Government is not opposed to a continuance.

Accordingly, it is ORDERED that the defendant’s Unopposed Motion to Continue Trial (Doc. # 34) is GRANTED. The trial in this matter is continued from **August 6, 2007**, to the criminal term of court beginning on **November 5, 2007**.

DONE this 26th day of July, 2007.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE